

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ANDREA STASKOWSKI,

Plaintiff(s),

-against-

NASSAU COMMUNITY COLLEGE,

Defendant(s).

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WILLIAM D. WALL, United States Magistrate Judge:

REPORT AND

RECOMMENDATION

CV 10-4665 (SJF) (WDW)

Before the court on referral from District Judge Feuerstein is a motion for default judgment by the pro se plaintiff, Andrea Staskowski. DE[6]. I recommend that it be denied because there is no evidence of good service of the summons and complaint on the defendant College. Further, I *sua sponte* recommend that, pursuant to Federal Rule 4(m), the plaintiff be required to serve the summons and complaint within 20 days from the date that the court rules on the Report and Recommendation.

DISCUSSION

This lawsuit was filed on October 12, 2010. It appears to be based on the same facts as the plaintiff's earlier lawsuit, CV 05-5984, which was dismissed on summary judgment. The plaintiff served the summons and complaint in the new action on Warren Richmond, the College's counsel in the earlier lawsuit, by first class mail. Mr. Richmond, in an affidavit filed in opposition to the motion for default, notes that he was not authorized to accept service of process on behalf of the defendant college in this action, and that service was not effected under the requirements of Federal Rule of Civil Procedure 4. DE[7]. He is correct. Because good service was never made, the motion for default must be denied.

I note also that more than 120 days have elapsed since the filing of the complaint. Pursuant to Federal Rule 4(m), if a defendant is not served within 120 days after the complaint is

filed, the court “--on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” I recommend that service be made within 20 days after the date on which Judge Feuerstein rules on this Report & Recommendation, and if service is not made in that time, the complaint be dismissed.

OBJECTIONS

A copy of this Report and Recommendation is being mailed to the pro se plaintiff and to Mr. Richmond on the date below. Any objections to this Report and Recommendation must be filed with the Clerk of the Court within 14 days. *See* 28 U.S.C. §636 (b)(1); Fed. R. Civ. P. 72; Fed. R. Civ. P. 6(a) and 6(d). Failure to file objections within this period waives the right to appeal the District Court’s Order. *See Ferrer v. Woliver*, 2008 WL 4951035, at *2 (2d Cir. Nov. 20, 2008); *Beverly v. Walker*, 118 F.3d 900, 902 (2d Cir. 1997); *Savoie v. Merchants Bank*, 84 F.3d 52, 60 (2d Cir. 1996).

Dated: Central Islip, New York
June 29, 2011

/s/ William D. Wall
WILLIAM D. WALL
United States Magistrate Judge